

# Draft CHARTER FOR ENVIRONMENTAL PERFORMANCE WITH THE COOPERATIVE COMPLIANCE PROGRAM, INC. for the SCRAP METAL RECYCLING INDUSTRY

This Charter for Environmental Performance is entered into by the Wisconsin Department of Natural Resources (DNR) and the Cooperative Compliance Program, Inc. (CCP, Inc.), collectively referred to as the “parties”.

## **I. Introduction**

A. CCP, Inc., is a Wisconsin Corporation, organized as a section 501(c)(6) corporation. CCP, Inc. currently acts as a privatized cooperative compliance program for the Wisconsin Institute of Scrap Recycling Industries, Inc (WISRI), and administers a compliance program relating to the storm-water permit regulations of the DNR for standard industrialized classification code number 5093. CCP, Inc. was incorporated on February 18, 1998 and has Articles of Incorporation and adopted By-laws. CCP, Inc. currently retains a vendor for most functions required under the general permit.

B. CCP, Inc. has been a leader in innovative thought and environmental performance. CCP, Inc. participated in developing the cooperative compliance program in the state, which served as a model for such programs in the rest of the nation. While the CCP, Inc. functions as a privatized program, the ultimate goals and objectives have been established collaboratively with DNR to meet the conditions of the Storm Water Pollution Prevention Permit. Together, the DNR and representatives from the scrap metal recycling industry identified key issues and continue to work together to address those issues. Such a precedent lends support to the Charter concept of better relations between government and business, while placing additional focus on workload reduction and cost savings to both parties.

C. The DNR is committed to providing a healthy and sustainable environment, to promoting the movement toward zero waste, and to protecting and enhancing the resources of the state for this generation and for generations that follow. The Department believes that implementing the Green Tier law with the scrap recycling

industry through this Charter will produce environmental performance beyond what is possible under existing law. The Department therefore has agreed to sign this Charter, and to work cooperatively with CCP, Inc. in order to achieve the goals laid out in this Charter.

D. The Environmental Results Program Act, § 299.83, Wis. Stats., created by 2003 Wisconsin Act 276 (effective on May 1, 2004), which is commonly called the “Green Tier Law,” authorizes the DNR to issue an environmental charter to an “association of entities” to assist those entities in achieving superior environmental performance and to assist the entities to participate in Tier 1 or Tier 2 of the program.

**Therefore, the DNR finds that this Charter will provide for greater environmental protection and enhancement than would be available absent this Charter and is, by virtue of these significant benefits, in the best interest of Wisconsin and its people.**

## **II. Overview**

A. The parties agree to create a practical and business-like cooperative initiative that encourages and supports the development of environmental management systems for scrap metal recyclers. Initially, a generic EMS is designed to lay the foundation for individual facility-specific environmental management systems. The parties agree that all participants in the Charter will have a generic EMS in place 18 months after the effective date of the Charter. The parties envision that individual facility-specific environmental management systems will be developed by the participants and will be in place 42 months after the effective date of the Charter. Finally, the parties envision that participants will seek Tier 2 status under the Green Tier program within 66 months after the effective date of the Charter.

B. By December 31, 2007, the DNR shall develop a process that allows elements of a participant’s EMS to be used to satisfy the requirements for a storm-water permit. Upon approval of an application for Tier 2 status under Green Tier, a participant may request a determination that their environmental management system can be used to satisfy the requirements in a storm-water permit. If the participant has achieved Tier 2 status, the DNR will create a privatized, performance-based alternative to a traditional regulatory permit. Any performance-based alternative will need to be renewed at least every five years.

C. By December 31, 2009, a joint evaluation will be made by DNR and CCP, Inc. as to whether or not the program is producing superior environmental performance.

#### **D. Specific Issues to Be Addressed**

In order to encourage and foster superior environmental performance, it is the parties' intent to institutionalize current department practices in this Charter. The parties agree to initially set EMS objectives in the following three areas.

##### **1. Mercury**

Automakers and other manufacturers use mercury-containing switches in the vehicles and appliances they produce. At some point, those vehicles and appliances reach the end of their useful life and may be processed through scrap recycling facilities as an alternative to land filling. CCP, Inc.'s goal is for participants under this Charter to work with the scrap recycling industry to develop and implement a program designed to remove mercury from automobiles and other scrap. All Charter participants commit to implementing a mercury switch removal program under this Charter within 12 months of the effective date of the Charter and continuing to investigate additional ways to eliminate other sources of mercury.

The best management practices that currently exist for the switch removal program will constitute compliance with the requirements, limitations and conditions for mercury in ch. NR 445. The parties agree to work together on best management practices to satisfy future mercury requirements. Compliance with the best management practices jointly developed will constitute compliance with regulatory requirements. Switches removed shall be handled as Universal Waste consistent with the February 5, 2004 guidance entitled "Management of Wisconsin-Specific Universal Waste-Revised".

##### **2. Shredder Fluff**

The scrap recycling process produces a material called "shredder fluff" that consists primarily of non-metallic materials. Shredder fluff makes a good daily cover material at landfills due to its ability to compact and therefore save landfill space. CCP, Inc. commits to continue working with the landfill industry to improve and expand the recycling use of shredder fluff as a daily cover material. In addition, CCP, Inc. commits to working with participants to continuously improve the quality of shredder fluff (and decrease any contaminants, such as oils, other liquids,

mercury, and other heavy metals). During the development of the generic EMS, Best Management Practices for the production of Shredder Fluff will be developed.

### **3. Solid Waste and Recycling**

Wisconsin law currently defines scrap material as solid waste. Wisconsin law (Wis. Stats. 287.05) also establishes the policy that solid waste should be reused and recycled. In order to promote reuse and recycling, and facilitate the way that scrap is handled, the parties agree that for all participants under the Charter:

- (a) the processing, handling, inventorying, management and movement of scrap metal and related scrap material at scrap metal salvage yards, in accordance with agreed upon best management practices, will not be regulated under the statutes or administrative rules that apply to “solid waste facilities”;
- (b) lead will be recycled; and
- (c) scrap processing activities will be considered recycling activities.

The contents of the generic EMS will be guided by Appendix A.

### **III. Definitions**

As used in this Charter:

- A. “CCP, Inc.” means the privatized cooperative compliance program for the Wisconsin Institute of Scrap Recycling Industries, Inc. (WISRI), which administers a compliance program relating to the storm-water permit regulations of the DNR for standard industrialized classification code number 5093. CCP, Inc. was incorporated on February 18, 1998 and has Articles of Incorporation and adopted By-laws.
- B. “Department”, “DNR” and “Department of Natural Resources” mean the Wisconsin Department of Natural Resources.
- C. “EMS” means environmental management system. An environmental management system is defined in § 299.83 (1)(b), Wis. Stats., to mean “an organized set of procedures to evaluate environmental performance and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in operations.”

- D. "Participant" means a business classified under standard industrial classification 5093 whose application has been approved by CCP, Inc, and who has agreed to be bound by the relevant terms of this Charter.
- E. "State" and "State of Wisconsin" mean the State of Wisconsin, acting through the Department of Natural Resources.

#### **IV. Developing an Interested Persons Group**

A. CCP, Inc. commits to establishing and maintaining an interested persons group to provide a process to increase transparency and trust in the Charter process. The interested persons group will consist of persons who live, own a business or work within a reasonable proximity to a facility participating in this Charter, or who otherwise have an interest in the workings of this Charter. The interested persons group shall also consist of at least one person who does business with a SIC 5093 organization who is a participant in this Charter.

B. CCP, Inc. will meet with this group on an annual basis to solicit their comments concerning CCP, Inc.'s participation under this Charter. A representative from a participating facility or a person hired by a participating facility will take notes during these meetings. These notes will be compiled into minutes that summarize the information discussed at each meeting. CCP, Inc. will review these minutes internally before providing them in draft form to the interested persons group and DNR representatives. Interested group members will have an opportunity to approve or suggest corrections to the minutes at the next meeting. Once approved by the interested persons group, a copy of the minutes will be filed at the CCP, Inc. offices and a copy of the minutes will be posted on the DNR's website for public viewing.

C. The parties will review the Interested Persons Group after two years. If CCP, Inc. has taken reasonable steps to secure participation in the Interested Persons Group, and has been unable to generate interest in this group, the parties shall consider other options, including suspending the Interested Persons Group.

#### **V. CCP, INC. commitments**

A. CCP, Inc. will retain a vendor or vendors to develop and promote a generic Environmental Management System (EMS) designed specifically for the Scrap Metal Recycling Industry. This generic EMS will satisfy the criteria for an EMS that is functionally equivalent to an ISO 14001 EMS as described in s. 299.83(1)(dg).

Section II.D. and Appendix A identify initial EMS objectives that have been jointly agreed to. The vendor will consult with the DNR on the development of the generic EMS and the DNR may invite others to review and comment on the generic EMS. An individual participant's ISO 14001 EMS will satisfy the requirement for an EMS for both Tier 1 and Tier 2 participation.

B. CCP, Inc. agrees to encourage members of SIC 5093 to submit an application (attached as Appendix B) whereby each member agrees to be bound by the relevant terms of this Charter, including agreeing to adopt the generic EMS developed by CCP, Inc.

C. No member of SIC 5093 may claim the benefits available under the Charter until their application under either Tier 1 or Tier 2 has been approved.

D. CCP, Inc. will prepare and submit to the DNR a draft public notice for all participants seeking to participate in this Charter ninety (90) days after the effective date of this Charter. The CCP, Inc. will arrange for a mailing to all identifiable SIC 5093 organizations inviting their participation in this Charter. The CCP, Inc. will submit to the DNR a recommendation for approval of the application(s) submitted from SIC 5093 organizations if they conform with this Charter and meet the requirements under § 299.83 (3), Wis. Stats.. CCP, Inc. will work with any potential participant to ensure that their application satisfies the elements of § 299.83 (3), Wis. Stats..

E. CCP, Inc. agrees to retain a vendor or vendors to perform annual audits of progress under the Environmental Management Systems for all participants. All participants will be audited annually beginning in calendar year 2006.

F. CCP, Inc. will ensure that a newsletter will be developed for participants and other stakeholders. These newsletters will be jointly distributed by CCP, Inc. and the DNR, and will be posted on the DNR web site. Publicly sharing information is designed to be a hallmark of the relationship between the parties.

G. CCP, Inc. agrees to retain a vendor or vendors to perform annual training, and participants agree to participate in the annual training. Training sessions regarding the generic EMS will be held in multiple locations statewide following development of the EMS. DNR agrees to provide resources and consultation in the development of

the training. The tasks will be completed eighteen months after the date of this Charter, and the training would be on-going over the course of the agreement as necessary to accommodate new members and implement new provisions of the charter.

H. CCP, Inc. will require each participant to provide timely notification to CCP, Inc. and to the DNR of any non-conformances or violations. When notification is made regarding a non-conformance or violation, the participant must also provide a corrective action plan to CCP, Inc. and the DNR. The DNR may offer comments on the corrective action plan, but CCP, Inc. will oversee the implementation of the corrective action plan. The corrective action plan will include a timeline for corrective measures and a reminder that failure to correct any non-conformances or violations within the time agreed upon may result in the participant being expelled from the Charter by CCP, Inc. If expelled for failure to correct a non-conformance or violation, no protection from fines or forfeitures is provided under this Charter.

I. If a violation involves a violation of a federally delegated program, CCP, Inc. will consult with the DNR on how to address the violation.

J. CCP, Inc. will submit an annual report to the DNR by March 31<sup>st</sup> for the preceding calendar year (beginning with calendar year 2006) detailing audit results, non-conformances and violations discovered during the preceding year, progress toward each year's EMS objectives, and reporting on the generic suite of performance indicators developed for all companies participating in the Green Tier program.

## **VI. DNR commitments**

A. The DNR agrees that, in exchange for CCP, Inc.'s fulfillment of its obligations under this Charter (including the fulfillment of responsibilities of participants under the Charter), it will not seek to bring any civil action, including issuing any order or seeking any judgment, related to the environmental responsibilities covered under this Charter against any participant who is operating under the charter unless the DNR determines that the violation 1) involves willful, intentional or grossly negligent behavior; 2) creates an imminent threat to public health or the environment; or 3) may cause serious harm to public health or the environment. The Department will ordinarily, in concert with the CCP, Inc.'s environmental expert, investigate a

complaint to determine an appropriate course of action. However, the Department retains the ability to independently investigate as authorized by the statute.

B. The parties agree to consult and work together on any legislation that would directly impact the participants.

C. The parties agree that any violation that results in federal prosecution under a federal law will be addressed outside the requirements of this Charter. However, the parties will encourage federal prosecutors to consider the provisions of this Charter in making any charging decision and in the selection of any remedy.

D. The DNR will issue numbered certificates to CCP, Inc. to be distributed to each participant. CCP, Inc. will issue a certificate to each participant once their application has been approved.

E. The DNR agrees to encourage participation by potential participants in this Charter by identifying each participant on the Green Tier web site maintained by the department, annually recognizing the participant in their local paper, and providing an Environmental Results Program logo for each participant to use.

F. The DNR commits to maintain the current inspection effort with respect to compliance audits of non-participants in the Charter on their level of compliance with existing regulations.

G. The DNR will provide a sector specialist to the scrap recycling industry during the life of this Charter.

## **VII. General Provisions**

A. The parties will jointly agree on the specifics for what will be tracked and reported in the following year. These specifics will link to the objectives set for the year, and any areas that the previous year's annual report indicates need additional attention.

B. Prior to the beginning of each calendar year, the parties will work together to review best management practices and EMS objectives for the following 5 years. Best management practices shall be designed to produce superior environmental performance.



C. The DNR commits to report on the strategy used to identify SIC 5093 facilities to be inspected and to report on the number of inspections done on an annual basis. The DNR agrees to maintain open lines of communication and will continue its commitment to transparency with CCP, Inc. and accountability for the compliance inspection commitment. CCP, Inc. is welcome to offer suggestions on the strategy used in an upcoming year and recommend a desirable number of inspections.

D. Each participant has an obligation under the Charter to correct any violations of state law or regulations that are discovered, and correct any findings of non-compliance with the EMS. If a violation or non-conformance is not corrected, or similar violations occur in the future, CCP, Inc. may expel the participant from participation in the program or may recommend that the DNR issue a NON or NOV without terminating the participant from the program. In order to determine whether a second event that would trigger a NON or NOV is a continuation of an uncorrected earlier event, the DNR shall examine the corrective actions taken by the participant and determine whether they were reasonably designed and implemented.

E. CCP, Inc. may expel a participant from the Charter for failure to comply with the minimum procedural and substantive requirements of this Charter or the generic EMS. Once a participant is expelled, they shall submit to the DNR, within 30 days of their expulsion, completed applications and other required paperwork to apply for any permits or approvals that had previously been replaced by the implementation of a generic or facility-specific EMS. Failure to submit the required paperwork within 30 days shall result in additional sanctions that are available under existing law for operating without the required approvals. Until such time as the DNR issues the necessary permits, any participant that has been expelled from the Charter will continue to operate under the Charter. However, for such participants, the DNR shall oversee their operations in lieu of CCP, Inc.

F. Conflict Resolution. The parties realize that disagreements may occur, that differing perspectives are a normal part of any relationship, and that timely resolution of disagreements is in the parties' interest. Both parties also agree to attempt to resolve disagreements at the lowest level possible. Most issues will be resolved between the sector contact provided by the DNR (under section VI.G. of this agreement) and the vendor (or other representative) of CCP, Inc. However, if the disagreement can not be resolved at this level, the issue may be elevated to the DNR

Bureau Director of the Bureau of Cooperative Environmental Assistance and the board of directors of CCP, Inc. The Bureau Director may solicit the involvement of other bureau directors from within the DNR to address the issue(s). If resolution is still not obtained, the issue can be referred to the Secretary of the Department of Natural Resources and the President of the Board of Directors for CCP, Inc. The aim is to resolve disputes as quickly as possible and, if unresolved at the end of two weeks, the issue is elevated to the next level.

G. The parties agree to work together with manufacturers and downstream business partners to strengthen ties and improve the environmental performance of these partners.

H. All agreements and covenants contained herein are severable, and in the event any of them shall be held invalid by any competent court or agency, this Charter shall be interpreted as if such invalid agreements or covenants were not contained herein. However, either party shall have the right to terminate this agreement following the severing of any portion of this agreement.

I. Nothing in this Charter is intended to be contradictory to, or inconsistent with, the DNR Wisconsin Pollution Discharge Elimination System (WPDES) Stormwater Cooperative Compliance Program (CCP) permit. In addition, this Charter intends to parallel, to the extent possible, the timing laid out in the current WPDES CCP program.

J. Amendment. This Charter may be amended only in writing by the principals to this agreement or their successors. An Amendment of this Charter may require an additional public notice requirement after the parties have negotiated the new language. If the Amendment will increase the number or scope of incentives, or if the Amendment will materially alter the level and type of environmental performance, then the DNR will provide an additional public notice and may provide an additional public informational hearing.

K. Construction. This Charter will be binding on the parties and their respective successors and assigns, and is not intended to confer any rights or remedies upon any other persons. Except as otherwise provided in this Charter, nothing herein shall be construed to impose a duty of obligation on CCP, Inc. to make any

additional agreements with or concessions to any other governmental or regulatory body.

L. Access to Records of CCP, Inc. For the purposes of interpreting, understanding or securing compliance with the Charter, and subject to any legally recognized privilege and reasonable notice, the DNR; 1) will be permitted access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents that are in the possession or under the control of CCP, Inc. and 2) may interview directors, officers, employees, and agents of CCP, Inc. regarding any matters related to the Charter, subject to the reasonable convenience of CCP, Inc., and without restraint or interference from CCP, Inc.

M. Effective date. After completion of the public notice and public hearing process, this Charter shall become effective upon signatures of both parties.

N. This Charter will be governed by Wisconsin law.

O. Termination. If CCP, Inc. fails to fulfill its obligations under this Charter in a timely or proper manner, or violates any of its provisions, the DNR may terminate this Charter by giving thirty (30) days written notice of termination, specifying the alleged violations, and the effective date of the termination. It shall not be terminated if, upon receipt of the notice, CCP, Inc. promptly cures the alleged violations prior to the end of the thirty (30) day period. CCP, Inc. reserves the right to appeal any decision of the DNR pursuant to this paragraph as provided for under Ch. 227.52, Wis. Stats., or any other applicable law. If the DNR fails to fulfill its obligations under this Charter in a timely or proper manner, or violates any of its provisions, CCP, Inc. may terminate this Charter by giving thirty (30) days written notice of termination, specifying the alleged violations, and the effective date of the termination. It shall not be terminated if, upon receipt of the notice, the DNR promptly cures the alleged violations prior to the end of the thirty (30) day period. The parties commit to remedying any non-performance in as timely a manner as possible.

If this Charter is terminated by either party, the DNR shall provide a reasonable time, not to exceed 120 days, for any entity that was a participant at the time the Charter was terminated, and that requires a permit, license or other approval from the DNR in the absence of the Charter, to complete and file the necessary paperwork to apply

for the required permit, license or other approval. If the applicant qualifies for the permit, license or other approval, the department agrees to issue the approval within 90 days of completing any public notice, public comment or public hearing process, unless an extension of time is requested. The participant may continue to operate in compliance with the EMS that was previously required under the Charter and their participation agreement pending final department action on the application for a permit, license or other approval. However, during this time, no participant may seek protection under the Charter or existing law for any activity that causes substantial harm to public health or the environment or that presents an imminent threat to public health or the environment.

P. Term of Charter and Action Period. This Charter will remain in effect for ten (10) years after its effective date unless either party terminates this Charter under the provisions of paragraph H or O of this section. The Charter may be extended for periods of up to ten years with the written approval of the parties.

Q. This charter does not bind future legislatures and their actions pertaining to department resources. This means that this charter does not direct legislative actions in resource allocation decisions.

R. Identifying Point of Contact. The parties agree to provide a point of contact within their respective organizations for this Charter. That point of contact shall be identified to the other party by letter, and if that point of contact changes, a new point of contact shall be identified by letter.

S. Warranty of Authority. Each of the persons signing below represent and warrant that he has the authority to execute this Charter on behalf of the party for which he signs.

Signatures:

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL  
RESOURCES

By\_\_\_\_\_

Scott Hassett, Secretary

CCP, INC.

By\_\_\_\_\_

Robert Est, PRESIDENT

## APPENDIX A

CCP, Inc., in conjunction with the DNR, will develop a generic EMS that will be adopted by all participants that do not have a site specific EMS. The generic EMS will specify objectives and targets for a variety of environmental activities. A participant would not be expected to undertake objectives for an activity that they do not engage in. This generic EMS will provide assistance to participants in achieving superior environmental performance. In the first three years of the generic EMS, CCP, Inc. agrees to work with the Department to develop environmental objectives and targets that identify superior environmental performance for at least the following issues:

- Mercury
- Shredder Fluff
- Fluids
- Lead